

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 14 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0248-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL SHANE LLOYD,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2006116920001DT

Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

Michael Shane Lloyd

Kingman
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Michael Lloyd seeks review of the trial court's order summarily dismissing his request to file a successive petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Pursuant to a plea agreement, Lloyd was convicted in March 2008 of manslaughter, and the trial court imposed an aggravated, fifteen-year sentence. Also in 2008, with the assistance of appointed Rule 32 counsel, Eric Kessler, Lloyd filed his first petition for post-conviction relief, asserting a claim of newly discovered evidence pursuant to Rule 32.1(e), which the court summarily denied in June 2009. In July 2011, Lloyd filed a successive notice and petition for post-conviction relief, in propria persona, raising claims of ineffective assistance of trial counsel, Rhonda O’Neal.¹ The court summarily dismissed his petition, concluding it was successive and untimely, and further noted Lloyd had not stated any facts to support filing a successive claim pursuant to Rule 32.1(d), (e), (f), (g), or (h).

¶3 Lloyd filed a third notice of post-conviction relief in August 2011, apparently asserting that his failure to file a timely notice of post-conviction relief was “without fault” on his part, and that Kessler had been deficient in failing to challenge O’Neal’s effectiveness in the first post-conviction petition. Noticeably missing from Lloyd’s notice, however, was any explanation why he did not challenge Kessler’s conduct in his second post-conviction proceeding. Although Lloyd filed his third petition for post-conviction relief on the same day as the notice, the court summarily dismissed the notice on the ground Lloyd had failed to adequately explain in his notice the reason

¹Although Lloyd suggested in his second notice of post-conviction relief that he might be challenging Kessler’s conduct for having failed to challenge O’Neal’s performance in first post-conviction proceeding, he presented no such claim in the related petition.

for his untimely filing based on Rule 32.1(d), (e), (f), (g), or (h).² *See* Ariz. R. Crim. P. 32.2(b) (trial court required to dismiss successive notice of post-conviction relief if it fails to “set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner”).

¶4 On review, Lloyd claims that both O’Neal and Kessler were ineffective. However, because Lloyd did not demonstrate to the trial court that his claims are excepted from preclusion by Rule 32.2(b), the court did not abuse its discretion in dismissing his successive notice of post-conviction relief. Moreover, Lloyd’s claims regarding O’Neal plainly are precluded because he was required to raise a claim of ineffective assistance of trial counsel in his first Rule 32 proceeding but did not do so. All claims regarding O’Neal’s performance are thus precluded pursuant to Rule 32.2(a)(2). *See State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (“Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.”) (emphasis omitted). In addition, to the extent Lloyd intended to raise a claim that Kessler had rendered him ineffective assistance, Rule 32.2(a)(3), precludes him from doing so because he failed to raise any such claim in his second post-conviction proceeding. *See Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d at 526. And, although the court properly dismissed Lloyd’s notice without

²Although the trial court stated this is Lloyd’s fourth post-conviction proceeding, based on the record before us, it appears to be his third. This misstatement, however, does not impact our ruling.

considering the petition he filed on the same day, he did not, in any event, meaningfully challenge Kessler's conduct in the petition.

¶5 Accordingly, although we grant the petition for review, we deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge